

REMARKS

Interview Summary: Applicants' agent thanks the Examiner for the telephone interview graciously provided on January 24, 2011, in which all claims were discussed. The MPEP suggests that, to be complete, an interview summary—even when one is already received from the examiner—must address the following issues. Applicants' summary follows each category.

(A) a brief description of the nature of any exhibit shown or any demonstration conducted;-----None

(B) identification of the claims discussed;-----76-89

(C) identification of specific prior art discussed; ----- Asano

(D) identification of the principal proposed amendments of a substantive nature discussed, unless they are already described on the Interview Summary form completed by the examiner; ----- None

(E) the general thrust of the principal arguments of the applicant and the examiner should also be identified; ----- Applicants' agent contended that 1) claim 89, which is dependent on claim 76, is not obvious over Asano and 2) the additional limitation of the R group in instant claims 87-88 renders them non-obvious over Asano.

(F) a general indication of any other pertinent matters discussed;-----None

(G) if appropriate, the general results or outcome of the interview; -----Examiner agreed that the 103 rejection should be withdrawn for all claims.

Office Action Response:

Claims 1-44 were presented at the time of entry into the national phase under 35 USC 371. By preliminary amendment accompanying the filing, claims 1-44 were canceled and new claims 45-63 were entered. In response to a Restriction Requirement, claims 45-62 were elected and claim 63 was withdrawn from consideration. In response to an election of species for examination, Applicants elected the species of claim 46 in which R is hydrogen for the treatment of bacterial infection. This species was read upon by claims 45-48, 54-56 and 58-62. In the previous communication, claims 64-75 were canceled and new claims 76-89 were added. The claims currently pending are 76-89. No new matter is believed to have been added with these amendments. Applicants reserve the right to pursue any canceled claims in a divisional application.

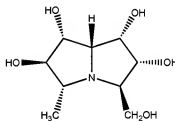
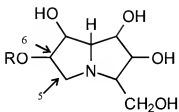
Applicants thank the Examiner for her withdrawal of the 35 USC §112 first and second paragraph rejections.

Rejection of claims under 35 U.S.C § 103(a)

Applicants thank the Examiner for her withdrawal of the 35 USC §103 rejections with respect to claims 76-86.

Claims 87-89 are rejected under section 103(a) as being obvious over Asano and Immune-strategy, both previously cited. Applicants respectfully disagree with this rejection. As discussed in the telephone call of January 24, 2011 (summarized above), the Examiner erroneously included claim 89 in the rejection; claim 89 is dependent upon claim 76, which possesses now-allowed specified stereochemistry.

Claims 87 and 88 include a limitation of R not present in claim 76. In claim 76, R can be hydrogen, while in claim 87, it cannot. Applicants believe, and the Examiner agreed in the telephone call, that this rejection is improper. The formula of claim 87 is shown on the left and compared with what Applicants believe to be the closest compound of Asano (Hyacinthacine C₁) on the right:



In claim 87, R cannot be hydrogen. Therefore, the person of skill would have to make at least two changes to the closest compound of Asano in order to arrive at the compounds of the invention: 1) the hydrogen of the hydroxyl at position 6 of Asano would have to be changed to a non-hydrogen moiety, and 2) a methyl group would have to be removed from Asano at position 5. Asano directs the person of skill to make neither of these changes, and no utility is disclosed for Hyacinthacine C₁. The *prima facie* obviousness rejection cannot be made against the broad claims on the basis of the structures in the cited art. Applicants respectfully request the formal withdrawal of the 103(a) rejection.

Double Patenting

All pending claims have been rejected by the Examiner on the ground of nonstatutory obviousness-type double patenting as being unpatentable over copending applications 10/597,290 and 10/597,296. Applicants believe this rejection to be overcome based on the filing dates of the three applications:

Application No.	PCT Date	Earliest Priority Date
Instant	1/21/04	1/23/03
10/597,296	1/21/05	1/21/04
10/597,290	1/21/05	1/21/04.

As the two cited applications have not yet been issued, Applicants believe it to be unnecessary to file a terminal disclaimer in the instant application to overcome the double patenting rejection. Applicants respectfully request the withdrawal of this rejection.

Conclusion

Applicants respectfully assert that the arguments presented above overcome all rejections presented by the Examiner and believe the application is now in condition for allowance. The Commissioner is hereby authorized to charge any additional fees that may be required, or credit any overpayment to, Deposit Account No. 08-1935, Docket No. 3073.054.

Respectfully submitted,



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